IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
CONTINENTAL AIRLINES, INC., et al.,	)	Case Nos. 90-932 through 90-984-MFW
Debtors.	)	
	)	Jointly Administered
CONTINENTAL AIRLINES, INC., et al.,	)	
Appellants,	)	
v.	)	Civ. No. 04-31-SLR (consolidated)
EASTERN PILOTS MERGER COMMITTEE, INC. and EASTERN ARBITRATION GROUP,	)	
Appellees.	)	
EASTERN PILOTS MERGER COMMITTEE, INC. and PETER CRAWFORD, individually and as the representative of all similarly situated Eastern pilots, and MICHAEL WEGLARZ,	)	
Plaintiffs,	)	
v.	)	Civ. No. 04-71-SLR
EASTERN AIR LINES, INC., CONTINENTAL AIRLINES, INC., and AIR LINES PILOTS ASSOCIATION,	)	
Defendants.	)	

MEMORANDUM ORDER

At Wilmington this 13th day of December, 2004, having

reviewed the voluminous papers submitted in connection with the above captioned appeal;[1]

IT IS ORDERED that said appeal (D.I. 3) is granted and the bankruptcy court's order of December 17, 2003[2] is reversed, for the reasons that follow:

1. **Standard of Review**. This court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991)(citing Universal Minerals, Inc. v. C.A. Hughes & Co.,

[1]Characteristic of this litigation, the procedural posture of the appeal is complicated by the fact that the appeal has been consolidated with a civil action initiated in the United States District Court for the Southern District of Florida, identified in this court as Eastern Pilot Merger Committee, et al. v. Eastern Air Lines, Inc., et al., Civ. No. 04-71-SLR.

[2]In re Continental Airlines, Inc., 303 B.R. 734 (Bankr. D. Del. 2003).

669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court opinions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002); In re Telegroup, 281 F.3d 133, 136 (3d Cir. 2002).

2. **Background.** The underlying dispute has a long and convoluted procedural history. On February 23, 1986, Eastern Airlines ("Eastern") and its pilots' union, the Air Lines Pilot Association ("ALPA"), ratified a collective bargaining agreement ("CBA"), including the following "labor protective provisions" ("LPPs"):

> Section 2(a). The term "merger" as used herein means joint action by the two carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate airline facilities or any of the operations or services previously performed by them through such separate facilities.
>
> Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representative of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.
>
> Section 13(a). In the event that any dispute or controversy . . . arises with respect to the protections provided herein, which cannot be settled by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of

> seven names furnished by the National Mediation Board for consideration and determination.

In re Continental Airlines, Inc., 125 F.3d 120, 124-125 (3d Cir. 1997)("Continental I"). On February 24, 1986, Texas Air Corporation, the parent of Continental Airlines, Inc. ("Continental"), acquired Eastern. ALPA asserted that the acquisition was a merger requiring integration of the Eastern and Continental pilots' seniority lists under Eastern's CBA. When Eastern and Continental refused to bargain with ALPA on the issue, ALPA initiated arbitration.

3. In March 1989, Eastern filed for protection under Chapter 11 of the Bankruptcy Code and asserted that the automatic stay precluded ALPA from proceeding with the arbitration. After protracted litigation, the Court of Appeals for the Second Circuit held that the automatic stay did not preclude arbitration. In re Ionosphere Clubs, Inc., 922 F.2d 984 (2d Cir. 1990). ALPA and Eastern thereafter proceeded with arbitration, during which ALPA sought prospective integration of the Eastern and Continental pilots' seniority lists and back pay until the integration was completed.

4. Continental filed for protection under Chapter 11 of the Bankruptcy Code in December 1990. ALPA (and certain individual Eastern pilots) filed unliquidated proofs of claim in that proceeding, based on the asserted right to seniority integration. Continental filed objections and sought a

declaration that the claims were general, unsecured, prepetition, dischargeable claims compensable by an award of monetary damages. ALPA disagreed and asserted that the pilots were entitled to specific performance of the CBA, namely, seniority integration. In addition, ALPA asserted that only the arbitrator had jurisdiction to determine whether a merger had occurred as defined by the CBA.

5. In April 1993, Continental's Second Amended Joint Plan of Reorganization was confirmed by the bankruptcy court. The bankruptcy court held in its confirmation order that any valid claims based on the LPPs would give rise to a right of payment dischargeable in bankruptcy and that no right to injunctive, equitable or other prospective relief would flow from any valid claim based on an award under the LPPs. Continental I, 125 F.3d at 127. The United States Court of Appeals for the Third Circuit affirmed, holding "that any claim based on an award of seniority integration arising out of the resolution of the [labor arbitration] dispute will be treated as a claim in bankruptcy giving rise to a right of payment. As such, the right to seniority integration is satisfiable by the payment of money damages." Id. at 136. Continental's duty to arbitrate the LPP dispute was left intact because Continental had never properly rejected the CBA pursuant to 11 U.S.C. § 1113. Id. at 138. The Third Circuit in Continental I, therefore, determined the proper

forum (arbitration) for resolution of the pilots' substantive rights (whether they have seniority integration rights), while maintaining the bankruptcy court's jurisdiction to determine the "manner in which the [claims] in bankruptcy would be treated if a right to seniority integration [were] established." Id. at 131 n.8.

6. During the proceedings leading to Continental I, ALPA and Continental settled the LPP dispute. The settlement was accepted by approximately two-thirds of the Eastern pilots who had filed claims in the bankruptcy case. The remaining Eastern pilots continued to pursue litigation in various fora and became variously identified as the "LPP Claimants," the Eastern Pilots Merger Committee ("EPMC"), and the "Baldridge LPP Class".

a. The LPP Claimants timely asserted their rights to arbitration following Continental I. Subsequently, the LPP Claimants sought to disallow the claims of all other Eastern pilots for their failure to timely invoke their right to arbitration. The bankruptcy court concluded that the issue of whether the claims of the non-LLP Claimant Eastern pilots were timely and properly asserted in the arbitration process was within the exclusive jurisdiction of the arbitrator. In re Continental Airlines, Inc., 236 B.R. 318, 325 (Bankr. D. Del. 1999).

b. While the LPP Claimants were pursuing arbitration,

the EPMC was pursuing litigation in the United States District Court for the District of New Jersey, seeking a declaratory judgment that Continental was obligated to comply, post-confirmation, with the LPPs. Continental moved to enjoin the litigation as a violation of the confirmation order. The bankruptcy court granted the motion, a decision affirmed by the Third Circuit. The Third Circuit held that, although the right to arbitrate under the CBA had survived the bankruptcy process, the demand for specific performance of the seniority integration clause had not. In re Continental Airlines, Inc., 279 F.3d 226, 230-231 (3d Cir. 2002) ("Continental II").

c. In October 1999, James Baldridge and other former Eastern pilots filed an adversary proceeding in the bankruptcy court against Continental. The Baldridge class action sought a determination that the one-year cap established in 11 U.S.C. § 502(b)(7) did not apply to their claims under the CBA. By order dated October 12, 2000, the bankruptcy court granted summary judgment to Continental, finding that, if the Eastern pilots established their right to seniority integration in arbitration, each of the pilots' claims would be treated as a general, unsecured, prepetition claim and that the value of each such claim for payment purposes would be limited to one year's wages pursuant to Rule 502(b)(7). On or about November 26, 2001, a settlement notice was sent to each member of the "Baldridge LPP

Class." After a hearing, the bankruptcy court entered an order on January 31, 2002 approving a settlement between the Baldridge LPP Class and Continental, allowing class members' claims in an amount in excess of the cap. On appeal by a former Eastern pilot who opted out of the settlement, the Third Circuit affirmed the settlement order on the merits.[3] In connection with the appellant's argument that his right to arbitration survived the settlement, the Third Circuit concluded as follows:

> If [appellant] were to return to arbitration, the arbitrator might recognize his right to seniority integration under the LPPs. However, any amount awarded by the arbitrator would be subject to § 502(b)(7)'s cap and would be less than [appellant] can recover under the settlement. Any relief awarded by the arbitrator would be meaningless; thus, [appellant's] right to arbitration has been mooted.

In re Continental Airlines, Inc., Nos. 03-2374 and 03-2375 (3d Cir. March 5, 2004) at 9.

7. In April 2003, representatives of EPMC and of yet another group of former Eastern pilots (the "Eastern Arbitration Group" or "EAG") filed a petition with the National Mediation Board seeking to resume arbitration under the CBA. Continental refused to participate in the arbitration proceedings and filed a motion in the bankruptcy court seeking an order, inter alia, finding that the EPMC and EAG had violated the confirmation order

[3]Because no party preserved a timely appeal, the Third Circuit did not reach the merits of whether the bankruptcy court correctly found that § 502(b)(7) applied.

by seeking a resumption of the arbitration proceeding. The bankruptcy court disagreed, concluding that "the discharge injunction does not enjoin the . . . attempt to resume the arbitration under the CBA." In re Continental Airlines, Inc., 303 B.R. at 738. The bankruptcy court also ruled that arbitration was not futile, despite the concession by the EPMC and EAG that "any award that the arbitrator may enter against Continental would be subject to the discharge provided in the Confirmation Order." Id. at 739. Specifically, the bankruptcy court explained that, although the EPMC and EAG are barred from recovering any award the arbitrator may enter against Continental, "simply obtaining that award may be sufficient. As the Third Circuit noted, the process of arbitration itself has a salutary purpose. . . Even a pyrrhic victory may be significant from the personal perspective of [EPMC and EAG], who have expended considerable time (almost 13 years), energy and money to prove that Continental and Eastern Airlines wronged them." Id. at 738-739. Continental has appealed this decision.[4]

8. **Analysis of the merits.** I recognize and agree that there is no order in the long and convoluted history of this

[4]As explained previously, on January 6, 2004, the EPMC and Mr. Crawford filed, in the Southern District of Florida, a complaint for declaratory judgment and injunctive relief to compel arbitration. The case was transferred to this court and consolidated with Continental's appeal. Mr. Weglarz was later added as a plaintiff to the consolidated case. (D.I. 35)

litigation that prohibits the LPP arbitration sought by the appellees. I respectfully disagree, however, with the bankruptcy court's conclusion that arbitration should be allowed to go forward. The appellees concede, as they must, that there can be no recovery from Continental under the LPPs, either specific performance or money damages. (D.I. 53 at 30) Nevertheless, as I understand the argument, the appellees maintain that they are seeking to enforce the LPPs under the CBA against the Continental pilots, not against Continental itself. (D.I. 53 at 32-36) According to this argument, under the auspices of the Railway Labor Act ("RLA"), Continental, its "officers, agents, and employees," have the

> duty . . . to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, **in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.**

45 U.S.C. § 152(First)(emphasis added). Although I profess no expertise in this area of the law, a straightforward reading of the above language suggests to me that it has no application to the dispute as characterized by appellees, a dispute between existing employees of an existing carrier and the former employees of a former carrier. Moreover, despite appellees' efforts to artificially narrow the dispute to being one between

the individual pilots, I have to believe that Continental in fact would be affected, if its personnel and payroll were to be changed in any way, a violation of the confirmation order.

9. I conclude, therefore, that allowing appellees to proceed with the LPP arbitration elevates form (the bare right to initiate arbitration) over substance (there is no substantive relief that can be achieved against the debtor-carrier, the basis for this court's jurisdiction), thus resulting in **futile** proceedings, the very antithesis of what either arbitration or judicial proceedings should be. The fact that appellees have pursued their claims for over a decade,[5] long after their cause had been finally determined and lost, is not laudable. Instead, the relentless pursuit of the specific performance of the LPPs, despite the adverse court rulings, represents a waste of the assets of the estate, as well as a tremendous waste of scarce judicial resources. For all of these reasons, I respectfully reverse the bankruptcy court's opinion and order and grant the appeal. The appellees are hereby enjoined from pursuing the LPP arbitration proceeding.

IT IS FURTHER ORDERED, consistent with the above

[5]I note that the CBA and caselaw suggest that these efforts are barred by the applicable statutes of limitation. See Section 13(a) of the CBA (20 days); DelCostello v. Int'l Bd. Of Teamsters, 462 U.S. 151 (1983) and Sisco v. Consolidated Rail Corp., 732 F.2d 1188 (3d Cir. 1984) (statute of limitations for RLA is 6 months).

reasoning and the procedural posture of this case, that:

1. The motions to dismiss filed by Continental (D.I. 19, 26, 42) are granted.

2. The motion to dismiss filed by ALPA (D.I. 22) is granted.

3. The motions to strike the complaint of Michael Weglarz filed by ALPA (D.I. 30, 59) are denied as moot.

4. The motions to impose sanctions against Continental filed by Michael Weglarz (D.I. 45, 69) are denied.

5. The motion for summary judgment filed by Michael Weglarz (D.I. 46) is denied.

6. The motion for summary judgment filed by EPMC and Peter Crawford (D.I. 52) is denied.

Sue L. Robinson
United States District Judge